

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 *File*

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Federal Communications Commission
Office of the Secretary

In re Application of

PERLA ACOSTA OJEDA
For a Construction Permit for a new
FM Station on Channel 243A in
Hobbs, New Mexico

)
) File No. BPH-910705ML
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)
)
)

To: Chief, FM Branch
Policy and Rules Division
Mass Media Bureau

**CONSOLIDATED OPPOSITION TO "SECOND PETITION TO DISMISS
APPLICATION" AND "THIRD PETITION TO DISMISS APPLICATION"**

Perla Acosta Ojeda ("Ojeda"),^{1/} by her counsel, hereby files her opposition to the Second and Third Petitions to Dismiss the above-captioned application filed by Rosemary Houston ("Houston"). Ojeda will respond to each of these Petitions to Dismiss separately herein.^{2/} In support hereof, Ojeda states as follows:

1. Ojeda is currently the only applicant under consideration for Channel 243A at Hobbs. Houston filed an

^{1/} On September 18, 1981, Ojeda filed an amendment which, inter alia, changed the name of the applicant to Ojeda Broadcasting, Inc.

^{2/} The two petitions to dismiss were filed prior to the Commission's Public Notice of September 21, 1991, Report No. NA-151, which announced acceptance of the Ojeda application. This opposition is filed in accordance with Section 1.45 of the Commission's Rules and pursuant to the "Motion for Extension of Time" and the "Motion for Further Extension of Time" filed on August 27, 1991 and September 17, 1991, respectively.

incomplete application for the same facility (File No. BPH-910705MH). On August 7, 1991, the Commission dismissed the Houston application. However, on September 10, 1991, Houston

return of the engineering materials if he is not paid for his services.

FINANCIAL CERTIFICATION

4. Houston clearly misunderstands the Commission's financial qualifications standards. Contrary to Houston's argument, the Commission does not require that an applicant obtain either an actual loan or a binding loan commitment from a bank in order to establish its financial qualifications. A.P. Walter, Jr., 6 FCC Rcd 875 (Rev. Bd. 1991); Las Vegas Valley Broadcasting v. FCC, 589 F. 2d 594, 599-601 (D.C. Cir. 1978). Instead, where the applicant is relying on a bank for financing, it need only obtain "reasonable assurance" that the requested loan will be forthcoming. A.P. Walter, Jr., supra; Multi-State Communications, Inc. v. FCC, 590 F. 2d 1117 (D.C. Cir. 1978).

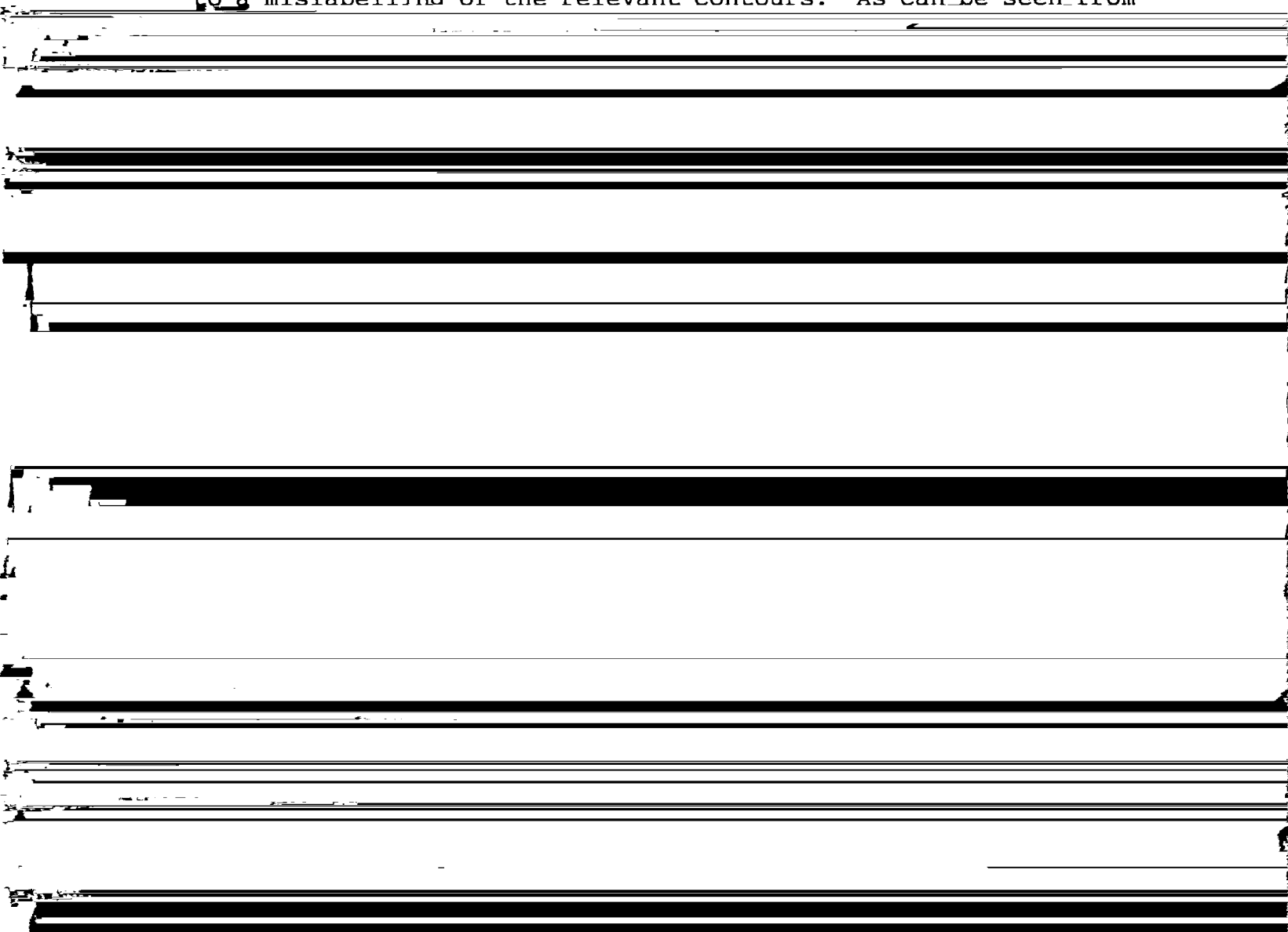
5. Here, Ojeda certified her financial qualifications in good faith based upon her discussions with the bank and a letter that she acquired from the bank prior to filing her application. She was not required to secure an actual loan or binding commitment from the bank. After reviewing Houston's Second Petition to Dismiss, Ojeda reconfirmed her arrangement with the United New Mexico Bank.

6. Houston's allegations are no more than a self-serving statement from her attorney that is based entirely upon hearsay and is patently biased. The statement mischaracterizes the

Commission's requirements with respect to financial qualifications, and as demonstrated above, is wrong as to the applicable law.

INCORRECT CONTOUR MAP AND COPYRIGHT NOTICE

7. The Commission has determined that a tenderability defect exists if any information cannot be determined confidently by "drawing" on the application as a whole. Report and Order in MM Docket 84-750, 50 Fed Reg 19936 (1985), recon. denied, 50 Fed Reg 43157 (1985); Broadcast Facilities Corporation, 3 FCC Rcd 7342, 7344 (1988). Here, Houston points to a mislabelling of the relevant contours. As can be seen from



affected. Accordingly, the Commission can find that the inadvertent mislabelling of the 70 dBu and 60 dBu contours does not render the application incomplete for tender nor unacceptable for processing.

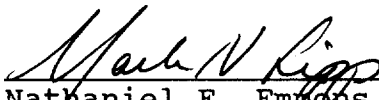
9. The engineer's copyright notice seeks to protect his work product by indicating that he may seek return of documents if he is not paid for his services. Such statement does not in any way render an application conditional. The statement reflects a private arrangement between the applicant and her engineer. The statement is standard for such applications and fails to render the application conditional or qualified in any way. In fact, the engineer has been paid for his services. Houston makes no allegation to the contrary.

10. Accordingly, Ojeda requests that the Commission DENY the Second and Third Petitions to Dismiss Ojeda's application.

Respectfully submitted,

PERLA ACOSTA OJEDA

By:


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Its Counsel

September 25, 1991

CERTIFICATE OF SERVICE

I, Yvonne C. Skinner, a secretary in the firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that on this 25th day of September, 1991, that I have caused a copy of the attached "CONSOLIDATED OPPOSITION TO 'SECOND PETITION TO DISMISS APPLICATION' AND 'THIRD PETITION TO DISMISS